## AMENDMENTS TO LB 747

1	1. Strike original sections 1 to 4 and insert the
2	following new sections:
3	"Section 1. Section 44-1978, Reissue Revised Statutes of
4	Nebraska, is amended to read:
5	44-1978. Sections 44-1978 to 44-19,105 and section 2 of
6	this act shall be known and may be cited as the Title Insurers Act.
7	Sec. 2. On or after January 1, 2004, when it appears
8	from the records of the register of deeds that (1) the parcel of
9	real estate may be the result of a subdivision of a larger parcel,
10	which subdivision may not have been in compliance with a state
11	statute or local ordinance or resolution governing subdivision of
12	land and (2) no evidence of compliance with such statute,
13	ordinance, or resolution appears in the records of the register of
14	deeds, a title insurer shall:
15	(a) Issue a policy endorsement affirmatively insuring the
16	insured owner against loss sustained in the event the conveyance to
17	the insured owner of the land described in the policy is a
18	violation of any state statute or local ordinance or resolution
19	governing subdivision of land in effect at the date of the policy;
20	(b) Issue an owner's title insurance policy that provides
21	equivalent coverage; or
22	(c) Obtain and file of record evidence of compliance with
23	all state statutes and local ordinances and resolutions governing
24	the subdivision of the parcel of land being insured.

- 1 This section applies to owner-occupied one to four family
- 2 residential real estate.
- 3 Sec. 3. Section 44-1984, Revised Statutes Supplement,
- 4 2002, is amended to read:
- 5 44-1984. (1) No insurer that transacts any line of
- 6 business other than title insurance shall be eligible for the
- 7 issuance or renewal of a certificate of authority to transact the
- 8 business of title insurance in this state nor shall title insurance
- 9 be transacted, underwritten, or issued by any insurer transacting
- 10 or authorized to transact any other line of business.
- 11 (2)(a) Notwithstanding subsection (1) of this section,
- 12 and to the extent such coverage is lawful within this state, a
- 13 title insurer shall is expressly authorized to issue closing or
- 14 settlement protection covering to a proposed insured upon request
- 15 if the title insurer issues a title insurance commitment or title
- 16 insurance policy. Such closing or settlement protection shall
- 17 conform to the terms of coverage and form of instrument as required
- 18 by the director and shall may indemnify a proposed insured solely
- 19 against loss of settlement funds only because of the following acts
- 20 of a title insurer's named title insurance agent:
- 21 (i) Theft of settlement funds; and
- 22 (ii) Failure to comply with written closing instructions
- 23 by the proposed insured when agreed to by the title insurance agent
- 24 relating to title insurance coverage.
- 25 (b) The director may prescribe or approve a required
- 26 charge for providing the coverage.
- 27 (c) A title insurer shall not provide any other coverage

- 1 which purports to indemnify against improper acts or omissions of a
- 2 person with regard to escrow, settlement, or closing services.
- 3 Sec. 4. Section 44-1993, Reissue Revised Statutes of
- 4 Nebraska, is amended to read:
- 5 44-1993. (1) A title insurer shall not accept title
- 6 insurance business from a title insurance agent unless there is in
- 7 force a written contract between the parties which sets forth the
- 8 responsibilities of each party and, when both parties share
- 9 responsibility for a particular function, specifies the division of
- 10 responsibilities.
- 11 (2) For each title insurance agent under contract with a
- 12 title insurer, the title insurer shall have on file a statement of
- 13 financial condition of each title insurance agent as of the end of
- 14 the previous calendar year setting forth an income statement of
- 15 title insurance business done during the preceding year and a
- 16 balance sheet showing the condition of its affairs as of the prior
- 17 December 31 certified by the title insurance agent as being a true
- 18 and accurate representation of the title insurance agent's
- 19 financial condition. Attorneys actively engaged in the practice of
- 20 law, other than that related to title insurance business, are
- 21 exempt from the requirements of this subsection.
- 22 (3) A title insurer shall, at least annually, conduct an
- 23 onsite review of the underwriting, claims, and escrow practices of
- 24 the title insurance agent which shall include a review of the title
- 25 insurance agent's title insurance policy form inventory and
- 26 processing operations. If the title insurance agent does not
- 27 maintain separate financial institution or trust accounts for each

- 1 title insurer it represents, the title insurer shall verify that
- 2 the funds held on its behalf are reasonably ascertainable from the
- 3 books of account and records of the title insurance agent.
- 4 (4) Within thirty days after executing or terminating a
- 5 contract with a title insurance agent, a title insurer shall
- 6 provide written notification of the appointment or termination and
- 7 the reason for termination to the director. Notices of appointment
- 8 of a title insurance agent shall be made on a form prescribed or
- 9 approved by the director.
- 10 (5) A title insurer shall maintain an inventory of all
- 11 title insurance policy forms or title insurance policy numbers
- 12 allocated to each title insurance agent.
- 13 (6) A title insurer shall have on file proof that each
- 14 title insurance agent is licensed by this state.
- 15 (7) A title insurer shall establish the underwriting
- 16 guidelines and, when applicable, limitations on title claims
- 17 settlement authority to be incorporated into contracts with its
- 18 title insurance agents.
- 19 (8)(a) A title insurer is liable for the defalcation,
- 20 conversion, or misappropriation by a title insurance agent
- 21 appointed by or under written contract with such title insurer of
- 22 escrow, settlement, closing, or security deposit funds handled by
- 23 such title insurance agent in contemplation of or in conjunction
- 24 with the issuance of a title insurance commitment or title
- 25 insurance policy by such title insurer. However, if no such title
- 26 insurance commitment or title insurance policy was issued, each
- 27 title insurer which appointed or maintained a written contract with

- 1 such title insurance agent at the time of the discovery of the
- 2 defalcation, conversion, or misappropriation shares in the
- 3 liability for the defalcation, conversion, or misappropriation in
- 4 the same proportion that the premium remitted to the title insurer
- 5 by such title insurance agent during the twelve-month period
- 6 immediately preceding the date of the discovery of the defalcation,
- 7 conversion, or misappropriation bears to the total premium remitted
- 8 to all title insurers by such title insurance agent during the
- 9 twelve-month period immediately preceding the date of the discovery
- 10 of the defalcation, conversion, or misappropriation.
- 11 (b) For purposes of this subsection, title insurance
- 12 agent includes (i) a person with whom a title insurer maintains a
- 13 title insurance agency agreement and (ii) an employer or employee
- 14 of a title insurance agent or of a person with whom a title insurer
- 15 maintains a title insurance agency agreement.
- Sec. 5. Section 44-19,106, Reissue Revised Statutes of
- 17 Nebraska, is amended to read:
- 18 44-19,106. Sections 44-19,106 to 44-19,123 and section 7
- 19 of this act shall be known and may be cited as the Title Insurance
- 20 Agent Act.
- 21 Sec. 6. Section 44-19,116, Revised Statutes Supplement,
- 22 2002, is amended to read:
- 23 44-19,116. (1)(a) A title insurance agent may operate as
- 24 an escrow, security, settlement, or closing agent subject to the
- 25 requirements of subdivisions (b) through <del>(e)</del> (f) of this
- 26 subsection.
- 27 (b) All funds deposited with the title insurance agent in

- 1 connection with an escrow, settlement, closing, or security deposit
- 2 shall be submitted for collection to or deposited in a separate
- 3 fiduciary trust account or accounts in a qualified financial
- 4 institution no later than the close of the next business day in
- 5 accordance with the following requirements:
- 6 (i) The funds shall be the property of the person or
- 7 persons entitled to them under the provisions of the escrow,
- 8 settlement, security deposit, or closing agreement and shall be
- 9 segregated for each depository by escrow, settlement, security
- 10 deposit, or closing in the records of the title insurance agent in
- 11 a manner that permits the funds to be identified on an individual
- 12 basis; and
- 13 (ii) The funds shall be applied only in accordance with
- 14 the terms of the individual instructions or agreements under which
- 15 the funds were accepted.
- 16 (c) Funds held in an escrow account shall be disbursed
- 17 only pursuant to a written instruction or agreement specifying how
- 18 and to whom such funds may be disbursed.
- 19 (d) Funds held in a security deposit account shall be
- 20 disbursed only pursuant to a written agreement specifying:
- 21 (i) What actions the indemnitor shall take to satisfy his
- 22 or her obligation under the agreement;
- (ii) The duties of the title insurance agent with respect
- 24 to disposition of the funds held, including a requirement to
- 25 maintain evidence of the disposition of the title exception before
- 26 any balance may be paid over to the depositing party or his or her
- 27 designee; and

- 1 (iii) Any other provisions the director may require.
- 2 (e)(i) Disbursements may be made out of an escrow,
- 3 settlement, or closing account only if funds in an amount at least
- 4 equal to the disbursement have first been received and if the funds
- 5 received are in one of the following forms:
- 6 (A) Lawful money of the United States;
- 7 (B) Wired funds when unconditionally held by the title
- 8 insurance agent;
- 9 (C) Cashier's checks, certified checks, bank money
- 10 orders, or teller's checks issued by a federally insured financial
- 11 institution and unconditionally held by the title insurance agent;
- 12 and
- 13 (D) United States treasury checks, federal reserve bank
- 14 checks, federal home loan bank checks, and State of Nebraska
- 15 warrants.
- 16 (ii) For purposes of this subdivision, federally insured
- 17 financial institution means an institution in which monetary
- 18 deposits are insured by the Federal Deposit Insurance Corporation
- 19 or National Credit Union Administration.
- 20 (f) Before a title insurance agent performs escrow,
- 21 security, settlement, or closing services that facilitate an
- 22 exchange under section 1031 of the Internal Revenue Code, the owner
- 23 of the funds to be deposited with the title agent shall receive
- 24 from the title insurance agent a written disclosure, on a separate
- 25 paper with no other information on the paper, which states that:
- 26 (i) Such services performed by a title insurance agent
- 27 are not regulated by the Department of Banking and Finance, the

- 1 Department of Insurance, or any other agency of the State of
- Nebraska or by any agency of the United States Government;
- 3 (ii) The safety and security of such funds is not
- 4 guaranteed by any agency of the State of Nebraska or of the United
- 5 States Government or otherwise protected by law; and
- 6 (iii) The owner of such funds should satisfy himself or
- 7 herself as to the safety and security of such funds.
- 8 (2) On and after January 1, 2004, every title insurance agent shall have an annual audit made of its escrow, settlement, 9 closing, and security deposit accounts, conducted by a certified 10 11 public accountant on a calendar year basis at its expense within 12 ninety days after the close of the previous calendar year. The 13 title insurance agent shall provide a copy of the audit report to 14 each title insurer which it represents. The director may adopt and 15 promulgate rules and regulations setting forth the 16 threshold level at which an audit would be required, the standards 17 of audit, and the form of audit report required. The director may 18 also require a title insurance agent to provide a copy of its audit report to the director. Title insurance agents who are attorneys 19 and who issue title insurance policies as part of their legal 20 representation of clients are exempt from the requirements of this 21 22 However, the title insurer may, at its expense, subsection. 23 conduct or cause to be conducted an annual audit of the escrow, 24 settlement, closing, and security deposit accounts of the attorney. 25 Attorneys who are exclusively in the business of title insurance are not exempt from the requirements of this subsection. 26
- 27 (3) If the title insurance agent is appointed by two or

- 1 more title insurers and maintains fiduciary trust accounts in
- 2 connection with providing escrow, closing, or settlement services,
- 3 the title insurance agent shall allow each title insurer reasonable
- 4 access to the accounts and any or all of the supporting account
- 5 information in order to ascertain the safety and security of the
- 6 funds held by the title insurance agent.
- 7 (4) (3) Nothing in the Title Insurance Agent Act shall be
- 8 deemed to prohibit the recording of documents prior to the time
- 9 funds are available for disbursement with respect to a transaction
- 10 if all parties consent to the transaction in writing.
- 11 (5) (4) Nothing in this section is intended to amend,
- 12 alter, or supersede other sections of the act or the laws of this
- 13 state or the United States regarding an escrow holder's duties and
- 14 obligations.
- 15 (6) (5) The director may prescribe a standard agreement
- 16 for escrow, settlement, closing, or security deposit funds.
- 17 Sec. 7. Whenever the director has reasonable cause to
- 18 believe that a title insurance agent is violating the Title
- 19 Insurance Agent Act or any rules and regulations adopted and
- 20 promulgated thereunder, the director may, without notice, and
- 21 before a hearing, issue a summary cease and desist order. At the
- 22 same time the order is issued, the director shall serve notice to
- 23 the title insurance agent of the reasons for such order and that
- 24 the title insurance agent may request a hearing in writing within
- 25 ten business days after receipt of the order. If a hearing is
- 26 requested, the director shall schedule a hearing within ten
- 27 business days after receipt of the request. The hearing shall be

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- 1 conducted in accordance with the Administrative Procedure Act. If
- 2 a hearing is not requested and none is ordered by the director, the
- 3 order shall remain in effect until modified or vacated by the
- 4 director. Any title insurance agent aggrieved by a final order of
- 5 the director may appeal the order. The appeal shall be in
- 6 accordance with the Administrative Procedure Act. In the event of
- 7 noncompliance with a summary cease and desist order, the director
- 8 may cause a complaint to be filed in the district court to enforce
- 9 the order.
- 10 Sec. 8. Original sections 44-1978, 44-1993, and
- 11 44-19,106, Reissue Revised Statutes of Nebraska, and sections
- 12 44-1984 and 44-19,116, Revised Statutes Supplement, 2002, are
- 13 repealed.".
- 14 2. Renumber the remaining section accordingly.